



Billing Code: 4410-10

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 280

CBP Dec. No. 11-23

RIN 1651-AA91

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1280

EOIR Docket No. 172; AG Order No. 3309-2011

RIN 1125-AA69

Civil Monetary Penalties Inflation Adjustment

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security (DHS) regulations to adjust for inflation certain civil monetary penalties assessed under the Immigration and Nationality Act (INA). The adjusted penalties are calculated according to a statutory formula, and will be effective for violations occurring on or after the effective date. This rule also amends the Department of Justice (DOJ) regulations to eliminate duplicative language and to substitute cross-references to the relevant regulations.

DATES: This rule will take effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

Concerning amendments to 8 CFR part 280: Joseph O'Donnell, U.S. Customs and Border Protection, Office of Field Operations, 202-344-1691 (not a toll-free call), r.odonnell@dhs.gov.

Concerning amendments to 8 CFR part 1280: Robin M. Stutman, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. Contact Telephone Number: 703-305-0470 (not a toll free call).

SUPPLEMENTARY INFORMATION:

I. Background

The Homeland Security Act of 2002 transferred the functions of the Immigration and Naturalization Service (INS) to DHS. See Pub. L. 107-296, tit. IV, subtit. D, E, F, 116 Stat. 2135, 2192. DOJ and its administrative component, the Executive Office for Immigration Review (EOIR), retained the functions of EOIR, see 6 U.S.C. 521, including jurisdiction over regulations currently codified in chapter V of title 8 of the Code of Federal Regulations (CFR). On February 28, 2003, the Attorney General published a final rule in the **Federal Register** that reflects the transfer of authorities from the INS to DHS and the current division of regulations between DHS and EOIR. See 68 FR 9824-01 (Feb. 28, 2003). Pursuant to that rule, certain parts of chapter I of title 8 of the CFR (pertaining to DHS) were duplicated in chapter V (pertaining to EOIR) to ensure that all relevant authority relating to the shared responsibilities was preserved. See id. at 9825.

Part of those duplicative regulations pertain to civil monetary penalties assessed under the INA.

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Adjustment Act), Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, provides for the regular evaluation of civil monetary penalties to ensure that the penalty amounts continue to maintain their deterrent effect and that the penalty amounts owed to the Federal Government are properly accounted for and collected. The Debt Collection Improvement Act of 1996 (Improvement Act) amended the Adjustment Act to require the head of each agency to “by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency.” Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321. The Improvement Act requires inflation adjustments every four years.

The penalties that may be assessed by U.S. Customs and Border Protection (CBP) upon carriers and persons who violate specified provisions of the INA currently are enumerated in 8 CFR 280.53. This section is repeated in chapter V of title 8 of the CFR at § 1280.53 in regulations relating to DOJ. As discussed above, this duplication was done in 2003 to ensure that all relevant authority was preserved.

After the revisions in this final rule take effect, the penalties for specified violations of the INA will be enumerated only in 8 CFR 280.53. Those penalties will be for the following violations of the INA:

- Section 231(g) of the INA, Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States.

- Section 234 of the INA, Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens.
- Section 240B(d) of the INA, Penalties for failure to depart voluntarily.
- Section 243(c)(1) of the INA, Penalties for violations of removal orders relating to aliens transported on vessels or aircraft under section 241(d) of the INA or for costs associated with removal under section 241(e) of the INA and penalties for failure to remove alien stowaways under section 241(d)(2) of the INA.
- Section 251(d) of the INA, Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest and lists in accordance with section 251 of the INA and penalties for use of alien crewmen for longshore work in violation of section 251(d) of the INA.
- Section 254(a) of the INA, Penalties for failure to control alien crewmen.
- Section 255 of the INA, Penalties for employment on passenger vessels of aliens afflicted with certain disabilities.
- Section 256 of the INA, Penalties for discharge of alien crewmen.
- Section 257 of the INA, Penalties for bringing into the United States alien crewmen with intent to evade immigration laws.
- Section 271(a) of the INA, Penalties for failure to prevent the unauthorized landing of aliens.
- Section 272(a) of the INA, Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground.
- Section 273(b) of the INA, Penalties for bringing to the United States aliens without required documentation.

- Section 274D of the INA, Penalties for failure to depart.
- Section 275(b) of the INA, Penalties for improper entry.

The penalty amounts for the violations of the INA enumerated in 8 CFR 280.53 were last adjusted for inflation in 1999, when DOJ published a final rule in the **Federal Register**, in accordance with the Adjustment and Improvement Acts. See 64 FR 47099 (Aug. 30, 1999). The final rule, however, did not adjust the penalties for certain violations of the INA that had only been in effect since 1996. DOJ noted at that time that the “[p]enalties not being adjusted by this rule will be adjusted, if appropriate, during the next adjustment required by the Debt Collection Improvement Act.” Id. at 47100. DOJ listed those penalties under paragraph (d) of 8 CFR 280.53, including for violations of sections 240B(d), 243(c)(1)(A) and (B), 274D, and 275(b) of the INA.

This final rule reflects compliance with Congress’s mandate to adjust civil penalties for inflation. Congress has detailed the method for calculating inflation adjustments. Section 5(a) of the Adjustment Act provides that the inflation adjustment shall be determined by increasing the maximum civil penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment, as defined in section 5(b). See 5 U.S.C. 2461 note. The cost-of-living adjustment is defined in section 5(b) as the percentage (if any) by which—

- (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds
- (2) the Consumer Price Index for the month of June of the calendar year in which the civil monetary penalty was last set or adjusted pursuant to law.

Id. Section 3(3) of the Adjustment Act defines “Consumer Price Index” to mean the Consumer Price Index for all-urban consumers [‘CPI-U’] published by the Department of Labor. Id. The CPI-U is accordingly used for all calculations in this final rule.

Section 5(a) of the Adjustment Act further provides that any increase required by the cost-of-living adjustment is subject to rounding according to the following standards:

- For penalties less than or equal to \$100, increases are rounded to multiples of \$10;
- For penalties greater than \$100 but less than or equal to \$1,000, increases are rounded to multiples of \$100;
- For penalties greater than \$1,000 but less than or equal to \$10,000, increases are rounded to multiples of \$1,000;
- For penalties greater than \$10,000 but less than or equal to \$100,000, increases are rounded to multiples of \$5,000;
- For penalties greater than \$100,000 but less than or equal to \$200,000, increases are rounded to multiples of \$10,000; and
- For penalties greater than \$200,000, increases are rounded to multiples of \$25,000.

See id.

In 2002, after the publication of DOJ’s final rule, Congress redesignated 8 U.S.C. 1221(d) (section 231(d) of the INA) as 8 U.S.C. 1221(g) (section 231(g) of the INA) and increased the penalty for noncompliance from \$300 per person to \$1,000 per person. See Pub. L. 107-173, tit. IV, § 402(c), 116 Stat. 559. For that reason, the penalty in section 231(g) of the INA, which is currently listed as corresponding to section 231(d) in 8 CFR

280.53(c)(1) and 8 CFR 1280.53(c)(1) as \$330 per person, has been superseded by the subsequent legislation and is currently \$1,000 per person.

II. Summary of the Calculations

In this final rule, DHS is adjusting the civil monetary penalty amounts specified in 8 CFR 280.53, as well as in section 231(g) of the INA (8 U.S.C. 1221(g)), relating to penalties imposed for various violations of the INA, in accordance with the cost-of-living adjustment formula and the rounding provisions.

To explain how we calculated the inflation increase adjustment for those penalties that were previously adjusted in 1999, as adjusted for cost-of-living, we will use the current penalty in section 234 of the INA (8 U.S.C. 1224), listed in 8 CFR 280.53(c)(2), as an example.

First, we must determine the CPI factor. Because we are adjusting the civil monetary penalty in 2011 and the penalty was last adjusted in 1999, we use the CPI-U for June of 2010 (217.965) and the CPI-U for June of 1999 (166.2). We calculate the CPI factor by subtracting the CPI-U for June of 1999 (166.2) from the CPI-U for June of 2010 (217.965) and then dividing by the CPI-U for June of 1999 (166.2). The result is 31.15%.

Second, to calculate the raw increase for each civil penalty (before rounding), we multiply the current penalty by the CPI factor. In our example, we multiply \$2,200 by 31.15%, which equals \$685.30.

In the third step, we round the raw increase according to the rules in section 5(a) of the Adjustment Act. Under these rules, because the current penalty (\$2,200) is greater

than \$1,000, but less than or equal to \$10,000, we round the raw increase (\$685.30) to the nearest multiple of \$1,000. The result is a rounded increase of \$1,000.

In the fourth and final step, we add the rounded increase (\$1,000) to the current penalty (\$2,200). Therefore, in our first example, the adjusted penalty for section 234 of the INA is \$3,200.

To explain how we calculated the inflation increase adjustment for the penalty in section 231(g) of the INA (8 U.S.C. 1221(g)), which was set by legislation in 2002, we first must determine the CPI factor. Because we are adjusting the civil monetary penalty in 2011 and the penalty in section 231(g) was set in 2002, we must use the CPI-U for June of 2010 (217.965) and for June of 2002 (179.9). We calculate the CPI factor by subtracting the CPI-U for June of 2002 (179.9) from the CPI-U for June of 2010 (217.965) and then dividing by the CPI-U for June of 2002 (179.9). The result is 21.16%.

Second, to calculate the raw increase (before rounding), we multiply the current penalty by the CPI factor. Here, we multiply \$1,000 by 21.16%, which equals \$211.60.

In the third step, we round the raw increase according to the rules in section 5(a) of the Adjustment Act. Since the current penalty (\$1,000) is greater than \$100, but less than or equal to \$1,000, we round to the nearest multiple of \$100, which makes the rounded increase \$200.

In the fourth and final step, we add the rounded increase (\$200) to the current penalty (\$1,000). Therefore, here, the adjusted penalty for section 231(g) would increase to \$1,200. However, section 31001(s)(2) of the Improvement Act provides that the initial adjustment of a civil monetary penalty may not exceed 10% of such penalty. Because the

penalty in section 231(g) was set by legislation in 2002, it has not been previously adjusted; therefore, the 10% statutory cap applies.

To apply the statutory cap, we must calculate 10% of the penalty. To calculate the statutory cap for the penalty, we take 10% of \$1,000, which equals \$100. We then add that result to the current penalty, \$1,000. The result is \$1,100. Because the adjusted penalty is higher than the 10% statutory cap, the 10% statutory cap must be used. Therefore, the adjusted civil monetary penalty for violations of section 231(g) is \$1,100.

Because DHS is also adjusting certain other penalties for the first time (namely, the penalties set forth in sections 240B(d), 243(c)(1)(A) and (B), 274D, and 275(b) of the INA), those increases are also subject to the 10% statutory cap. Accordingly, we must first apply the normal formula and then, if necessary, apply the statutory cap.

To explain our calculations for adjusting the civil monetary amounts for those penalties that are being adjusted for the first time, we will use section 240B(d) of the INA (8 U.S.C. 1229c(d)) as our example. Section 240B(d) provides that each alien who fails to depart the U.S. voluntarily after being permitted to do so is liable for a \$1,000 minimum and a \$5,000 maximum penalty.

First, we must determine the CPI factor. The civil monetary penalty was enacted in 1996, so we must use the CPI-U for June of 1996 (156.7). We calculate the CPI factor by subtracting the CPI-U for June of 1996 (156.7) from the CPI-U for June of 2010 (217.965) and then dividing by the CPI-U for June of 1996 (156.7). The result is 39.10%.

Second, to calculate the raw increase (before rounding), we multiply the current penalty by the CPI factor. For the minimum penalty, the raw increase is calculated by

multiplying \$1,000 by 39.10%, which is \$391.00. For the maximum penalty, we multiplied \$5,000 by 39.10%, which equals \$1,955.00.

In the third step, we round the raw increase according to the rules in section 5(a) of the Adjustment Act and then add this rounded increase to the current penalty. In this instance, the raw increase for the minimum penalty (\$391.00) rounds to \$400, resulting in an adjusted penalty of \$1,400. For the maximum penalty, the raw increase (\$1,955.00) rounds to \$2,000, resulting in an adjusted penalty of \$7,000. However, as stated above, under section 31001(s)(2) of the Improvement Act, the initial adjustment of a civil monetary penalty may not exceed 10% of such penalty.

To apply the statutory cap, we must calculate 10% of the minimum and maximum penalties. To calculate the statutory cap for the minimum penalty, we take 10% of \$1,000, which equals \$100. We then add that result to the current minimum, \$1,000. The result is \$1,100. We follow the same steps to calculate the maximum statutory penalty: we take 10% of \$5,000, which equals \$500. We then add that number (\$500) to the current maximum, \$5,000. The result is \$5,500. Because the adjusted penalties are higher than the 10% statutory cap, the 10% statutory cap must be used. Therefore, the minimum and maximum adjusted civil monetary penalties for violations of section 240B(d) of the INA are \$1,100 and \$5,500, respectively.

III. Adjustment of Civil Monetary Penalties

As shown above in the first example, application of the cost-of-living adjustment formula results in an inflation adjustment of 31.15%, based on a CPI-U of 217.965 for June 2010 and a CPI-U of 166.2 for June 1999 (when the last adjustment was made). This results in new civil monetary penalties for violations of sections 234, 251(d), 254(a),

257, 271(a), 272(a), and 273(b) of the INA and for the maximum penalty for violations of section 256 of the INA. There will be no inflation adjustment to the civil monetary penalty for violations of section 255 or the minimum penalty for violations of section 256 of the INA because, due to rounding, the application of the cost-of-living adjustment formula results in the same adjusted penalty as the current penalty, as demonstrated in the chart below. Additionally, there will be an inflation adjustment to the civil monetary penalty for violations of section 231(g) of the INA. DHS has also adjusted the civil monetary penalties for violations of sections 240B(d), 243(c)(1), 274D, and 275(b) of the INA. The adjustments are shown in the chart below:

INA § Statute	Current penalty	Year last adjusted	CPI factor (2011) (%)	Raw Increase (2011)	Rounder	Rounded Increase	Adjusted Penalty
INA § 231(g); 8 U.S.C. 1221(g)	\$1,000	enacted in 2002	21.16%	\$211.60	10% statutory cap	\$100	\$1,100
INA § 234; 8 U.S.C. 1224	\$2,200	1999	31.15%	\$685.30	1,000	\$1,000	\$3,200
INA § 240B(d); 8 U.S.C. 1229c(d)	\$1,000 minimum/ \$5,000 maximum	enacted in 1996	39.10%	\$391.00 minimum/ \$1,955.00 maximum	10% statutory cap	\$100 minimum/ \$500 maximum	\$1,100 minimum/ \$5,500 maximum
INA § 243(c)(1)(A); 8 U.S.C. 1253(c)(1)(A)	\$2,000	enacted in 1996	39.10%	\$782.00	10% statutory cap	\$200	\$2,200
INA § 243(c)(1)(B); 8 U.S.C. 1253(c)(1)(B)	\$5,000	enacted in 1996	39.10%	\$1,955.00	10% statutory cap	\$500	\$5,500
INA § 251(d); 8 U.S.C. 1281(d)	\$220 for each alien not reported/ \$5,500 for use of alien crewman	1999	31.15%	\$68.53 for each alien not reported/ \$1,713.25 for use of alien crewman	100 for each alien not reported/ 1,000 for use of alien crewman	\$100 for each alien not reported/ \$2,000 for use of alien crewman	\$320 for each alien not reported; \$7,500 for use of alien Crewman
INA § 254(a); 8 U.S.C. 1284(a)	\$550 minimum/ \$3,300 maximum	1999	31.15%	\$171.33 minimum/ \$1,027.95 maximum	100 minimum/ 1,000 maximum	\$200 minimum/ \$1,000 maximum	\$750 minimum/ \$4,300 maximum
INA § 255; 8 U.S.C. 1285	\$1,100	1999	31.15%	\$342.65	1,000	\$0	\$1,100
INA § 256; 8 U.S.C. 1286	\$1,500 minimum/ \$3,300 maximum	1999	31.15%	\$467.25 minimum/ \$1,027.95 maximum	1,000 minimum/ 1,000 maximum	\$0 minimum/ \$1,000 maximum	\$1,500 minimum/ \$4,300 maximum
INA § 257; 8 U.S.C. 1287	\$11,000	1999	31.15%	\$3,426.50	5,000	\$5,000	\$16,000
INA § 271(a); 8 U.S.C. 1321(a)	\$3,300	1999	31.15%	\$1,027.95	1,000	\$1,000	\$4,300
INA § 272(a); 8 U.S.C. 1322(a)	\$3,300	1999	31.15%	\$1,027.95	1,000	\$1,000	\$4,300
INA § 273(b); 8 U.S.C. 1323(b)	\$3,300	1999	31.15%	\$1,027.95	1,000	\$1,000	\$4,300

INA § Statute	Current penalty	Year last adjusted	CPI factor (2011) (%)	Raw Increase (2011)	Rounder	Rounded Increase	Adjusted Penalty
INA § 274D; 8 U.S.C. 1324d	\$500	Enacted in 1996	39.10%	\$195.50	10% statutory cap	\$50	\$550
INA § 275(b); 8 U.S.C. 1325(b)	\$50 minimum/ \$250 maximum	Enacted in 1996	39.10%	\$19.55 minimum/ \$97.75 maximum	10% statutory cap	\$5 minimum/ \$25 maximum	\$55 minimum/ \$275 maximum

The increased penalty amounts will apply only to violations that occur on or after the effective date of this rule. For violations that occurred before the effective date, the current penalties listed as the first amount in the regulation (and shown in the chart above) will apply.

DHS is amending 8 CFR 280.53(c) to adjust the listed penalty amounts pursuant to the statutory formula discussed above. DHS is also amending 8 CFR 280.53(c) to add to the list those civil monetary penalties that are being adjusted for the first time. These include the penalties prescribed in sections 240B(d), 243(c)(1), 274D, and 275(b) of the INA. These penalties were previously listed in § 280.53(d), entitled, “Identification of sections requiring no adjustment to penalties.” Because these penalties will be incorporated in 8 CFR 280.53(c) in the final rule, DHS is removing 8 CFR 280.53(d).

IV. Conforming Changes to DHS Regulations

As explained further in the following section discussing changes to the DOJ regulations, part 280 contains two existing regulations (last amended in 1989), that have never been updated to reflect subsequent changes in the relevant regulatory provisions. DHS is making two technical, conforming amendments to provide revised language referring to the correct, current regulatory provisions. Sections 280.13(b) and 280.51(c)

are being revised to delete the phrase “an appeal may be taken to the Board of Immigration Appeals (Board) within 15 days after the mailing of the notification of decision as provided in part 3 of this chapter” and to substitute the phrase “an appeal may be taken to the Board as provided in 8 CFR part 1003.”

V. Changes to DOJ Regulations

DOJ has concluded that it is not necessary to retain the provisions of 8 CFR 1280.53 to reflect the inflation adjustments to the penalties imposed by DHS. Section 1280.53, which, as noted above, simply reproduces the DHS regulations at 8 CFR 280.53, was promulgated in 2003 in connection with the transfer of authority from the former INS to DHS. See 68 FR 9824 (Feb. 28, 2003). To ensure that all relevant authority relating to the shared responsibilities of DHS and DOJ was preserved, DOJ duplicated in their entirety the regulations in 8 CFR 280 into new part 1280 so that these provisions would also continue to be a part of the DOJ regulations. See id. at 9827. Following the transfer of authority, the Board retained appellate authority to review DHS decisions involving certain administrative fines and penalties listed in 8 CFR 280.53. See 8 CFR 1003.1(b)(4). Because the Board’s appellate authority to review DHS decisions involving the penalty provisions set forth in 8 CFR 280.53 is provided in 8 CFR part 1003 and because the duplicative language in 8 CFR 1280.53 does not add anything to the existing regulatory provisions, DOJ is removing § 1280.53 to eliminate the duplicative language.

Upon review of the remaining provisions in part 1280 other than § 1280.53, DOJ has concluded that these other provisions do not need to be retained in the EOIR regulations either. These other provisions in part 1280 duplicate regulatory provisions in 8 CFR 280

and almost all of them relate solely to the authority of DHS to impose fines and civil monetary penalties. It is unnecessary to duplicate in the EOIR regulations the text of provisions that pertain to DHS's internal authority.

There are two provisions in part 1280 relating directly to the authority of the Board, §§ 1280.13(b) and 1280.51(c), each of which provides that “an appeal may be taken to the Board [from DHS's decision] within 15 days after the mailing of the notification of decision as provided in part 3 of this chapter.” These two provisions, and the corresponding provisions in part 280 from which they were taken, have not been substantively revised since 1989 and have long been out-of-date. Sections 1280.13(b) and 1280.51(c) still refer to 8 CFR part 3, even though the relevant provisions of that part were redesignated as part 1003 in 2003, as discussed above. More significantly, the current language in §§ 1280.13(b) and 1280.51(c) (and the corresponding language in §§ 280.13(b) and 280.51(c) of the DHS regulations) refers to a 15-day period for the filing of an appeal to the Board. Those provisions have never been revised to conform to the regulatory amendments that were made years ago to extend the period for filing an appeal to the Board from a DHS decision to 30 days, as is provided in § 1003.3(a)(2). See 67 FR 54878, 54904 (Aug. 26, 2002). These provisions accordingly need to be removed from part 1280 to avoid confusion given that the controlling regulations relating to the Board's appellate review are set forth in § 1003.3.

For these reasons, DOJ is removing all of the current provisions in part 1280 and adding a new § 1280.1, which cross-references the DHS regulations in 8 CFR part 280 and the EOIR regulations in 8 CFR part 1003 governing the appellate authority of the Board. The removal of these duplicative regulatory provisions does not affect the current

legal regime or the authority of the Board to adjudicate appeals from DHS decisions imposing fines and civil penalties under 8 CFR part 280.

DOJ has already made similar changes to its regulations at 8 CFR part 1274a, addressing control of employment of aliens. See 76 FR 16525 (Mar. 24, 2011); 74 FR 2337, 2339 (Jan. 15, 2009). There, DOJ removed duplicative regulations in part 1274a, and replaced them with a new § 1274a.1 that contains a cross-reference to the DHS regulations at 8 CFR part 274a. A statement was added indicating that these DHS regulations apply, to the extent relevant, in proceedings before EOIR. The changes that DOJ is making to 8 CFR part 1280 in this final rule are modeled on the changes DOJ previously made to 8 CFR part 1274a in an analogous context. These changes to part 1280 do not alter the current legal regime because the regulations in part 1280, which have been applicable to the Board, merely duplicate the existing regulations in part 280.

VI. Regulatory Analyses

A. Administrative Procedure Act (APA), 5 U.S.C. 553

This final rule is being promulgated to ensure that the amount of civil penalties assessed or enforced by DHS reflect the statutorily mandated ranges as adjusted for inflation. Pursuant to 5 U.S.C. 553(b)(3)(B), the Secretary and the Attorney General find that good cause exists for immediate implementation of this final rule without prior notice and comment because it would be unnecessary to delay publication of this rule in final form, pending notice and an opportunity for public comment. This rule is a nondiscretionary ministerial action as the calculations of the adjustments follow the mathematical formula set forth in section 5 of the Adjustment Act, as amended. In addition, the other changes to part 1280 do not alter the current legal requirements or the

authority of the Board to adjudicate appeals from DHS decisions imposing fines and penalties under 8 CFR part 280 because the regulations in part 1280 merely duplicate the existing regulations in part 280. For these reasons, notice and comment would be unnecessary.

B. Executive Order 12866 and Regulatory Flexibility Act

This final rule does not meet the criteria of a “significant regulatory action” as specified under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. Furthermore, the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601 et. seq. The Regulatory Flexibility Act does not apply to this final rule because a notice of proposed rulemaking is not required for the reasons stated above.

C. Executive Order 13132: Federalism

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of the government. Therefore, in accordance with Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant a preparation of a Federalism Assessment.

D. Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the Unfunded Mandates Reform Act of 1995.

E. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements triggered by this final rule.

F. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

VII. Signing Authority

This amendment to the regulations is being issued in accordance with 8 U.S.C. 1103 pertaining to the authority of the Secretary of Homeland Security (or his/her delegate) and the Attorney General (or his/her delegate) to prescribe regulations regarding immigration and nationality.

List of Subjects

8 CFR Part 280

Administrative practice and procedure, Immigration, and Penalties.

8 CFR Part 1280

Administrative practice and procedure, Immigration, and Penalties.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Chapter I

For the reasons stated in the preamble, the Secretary amends part 280 of title 8 of the Code of Federal Regulations as set forth below.

PART 280—IMPOSITION AND COLLECTION OF FINES

1. The authority citation for part 280 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221-223, 226, 227, 230; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

2. In § 280.13, the last sentence of paragraph (b) is amended by removing the phrase “an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in part 3 of this chapter” and adding in its place the phrase “an appeal may be taken to the Board as provided in 8 CFR part 1003”.

3. In § 280.51, the last sentence of paragraph (c) is amended by removing the phrase “an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in part 3 of this chapter” and adding in its place the phrase “an appeal may be taken to the Board as provided in 8 CFR part 1003”.

4. Section 280.53 is revised to read as follows:

§ 280.53 Civil monetary penalties inflation adjustment.

(a) In general. In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-34, 110 Stat. 1321, the civil monetary penalties provided by law within the jurisdiction of the Department of Homeland Security (DHS) and listed in paragraph (c) of this section are adjusted as set forth in this section, effective for violations occurring on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

(b) Calculation of adjustment. (1) The inflation adjustments described in paragraph (c) of this section were determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty assessed or enforced by DHS by the cost-of-living adjustment as that term is defined by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410. Any increase so determined was rounded to the nearest—

(i) Multiples of \$10 in the case of penalties less than or equal to \$100;

(ii) Multiples of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(iii) Multiples of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(iv) Multiples of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(v) Multiples of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(vi) Multiples of \$25,000 in the case of penalties greater than \$200,000.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the initial adjustment for each penalty is capped at 10%.

(c) Adjustment to penalties. The civil monetary penalties provided by law within the jurisdiction of DHS, as set forth in this paragraph (c)(1) through (14), are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, effective for

violations occurring on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] as follows:

(1) Section 231(g) of the Act, Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States: from \$1,000 to \$1,100.

(2) Section 234 of the Act, Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens: from \$2,200 to \$3,200.

(3) Section 240B(d) of the Act, Penalties for failure to depart voluntarily: from \$1,000 minimum/\$5,000 maximum to \$1,100 minimum/\$5,500 maximum.

(4) Section 243(c)(1) of the Act, Penalties for violations of removal orders relating to aliens transported on vessels or aircraft, under section 241(d) of the Act, or for costs associated with removal under section 241(e) of the Act, from \$2,000 to \$2,200; and penalties for failure to remove alien stowaways under section 241(d)(2), from \$5,000 to \$5,500.

(5) Section 251(d) of the Act, Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest and lists in accordance with section 251 of the Act: from \$220 to \$320; and penalties for use of alien crewmen for longshore work in violation of section 251(d) of the Act: from \$5,500 to \$7,500.

(6) Section 254(a) of the Act, Penalties for failure to control alien crewmen: from \$550 minimum/\$3,300 maximum to \$750 minimum/\$4,300 maximum.

(7) Section 255 of the Act, Penalties for employment on passenger vessels of aliens afflicted with certain disabilities: remains at \$1,100.

(8) Section 256 of the Act, Penalties for discharge of alien crewmen: from \$1,500 minimum/\$3,300 maximum to \$1,500 minimum/\$4,300 maximum.

(9) Section 257 of the Act, Penalties for bringing into the United States alien crewmen with intent to evade immigration laws: from \$11,000 maximum to \$16,000 maximum.

(10) Section 271(a) of the Act, Penalties for failure to prevent the unauthorized landing of aliens: from \$3,300 to \$4,300.

(11) Section 272(a) of the Act, Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground: from \$3,300 to \$4,300.

(12) Section 273(b) of the Act, Penalties for bringing to the United States aliens without required documentation: from \$3,300 to \$4,300.

(13) Section 274D of the Act, Penalties for failure to depart: from \$500 to \$550, for each day the alien is in violation.

(14) Section 275(b) of the Act, Penalties for improper entry: from \$50 minimum/\$250 maximum to \$55 minimum/\$275 maximum, for each entry or attempted entry.

DEPARTMENT OF JUSTICE

8 CFR Chapter V

For the reasons stated in the preamble, the Attorney General amends part 1280 of title 8 of the Code of Federal Regulations, as set forth below.

PART 1280—IMPOSITION AND COLLECTION OF FINES

1. The authority citation for part 1280 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221-223, 226, 227, 230; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

2. Section 1280.1 is revised to read as follows:

§ 1280.1 Review of fines and civil monetary penalties imposed by DHS.

(a) Applicable regulations. The regulations of the Department of Homeland Security (DHS) relating to the imposition of certain fines and civil monetary penalties under provisions of the Immigration and Nationality Act, including sections 231(g), 234, 240B(d), 241(d) and (e), 243(c)(1), 251(d), 254(a), 255, 256, 257, 271(a), 272(a), 273(b), 274D, and 275(b), are contained in 8 CFR part 280.

(b) Adjudication of civil monetary penalty proceedings. The Board of Immigration Appeals (Board) has appellate authority to review DHS decisions involving fines and civil monetary penalties imposed under 8 CFR part 280, as provided under 8 CFR part 1003. The regulations in 8 CFR part 280 governing the imposition of certain fines and civil monetary penalties are applicable in such proceedings before the Board.

(c) Civil monetary penalties under sections 274A, 274B, or 274C. For regulations relating to civil monetary penalties imposed under sections 274A, 274B, or 274C of the Act, see 8 CFR parts 274a and 1274a and 28 CFR part 68.

3. Sections 1280.2 through 1280.7 are removed.
4. Sections 1280.11 through 1280.15 are removed.
5. Sections 1280.21 is removed.
6. Sections 1280.51 through 1280.53 are removed.

Janet Napolitano
Secretary

Eric H. Holder, Jr.
Attorney General

[FR Doc. 2011-30174 Filed 11/30/2011 at 8:45 am; Publication Date: 12/01/2011]